



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/167943

PRELIMINARY RECITALS

Pursuant to a petition filed August 11, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Office of the Inspector General (OIG) to impose a sanction and to recover FoodShare benefits (FS), a hearing was held on September 16, 2015, by telephone. A hearing set for September 2, 2015 was rescheduled at the agency's request.

The issue for determination is whether the agency correctly imposed an Intentional Program Violation (IPV) sanction and overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED] |
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Office of the Inspector General
P.O. Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. After a trial on April 29, 2015, petitioner was found guilty on violating Brown County ordinance 30.05(2), "Interfering with Proper Administration of Public Benefits", a subsection of the ordinance entitled "Prohibiting Fraud In Public Assistance." The charging document issued to

petitioner informed her that a conviction would result in a one-year bar from receiving FS for a first violation. See Exhibit 2, page 2.

3. Evidence brought forth in the Brown County case was that two stores named [REDACTED] and [REDACTED] were trafficking FS by allowing recipients to use FS to pay off debts, by providing cash for FS, and by providing a banned stimulant plant called khat in exchange for FS. The stores were shown to have virtually no stock, in particular no fresh meat, and evidence showed that large purchases were extremely unlikely. Petitioner was shown to have made 6 purchases of over \$100 at the stores in 2014.
4. Two of the large transactions showed up in the [REDACTED] store's ledger as being repayments for debts. Petitioner also made two purchases totaling \$135.80 four minutes apart on June 11, 2014.
5. Petitioner had no prior program violations. Following the guilty verdict the state FS agency imposed a one-year bar on petitioner receiving FS.
6. By a notice dated May 14, 2015, the OIG informed petitioner that she was overpaid \$1,511.03 in FS, claim no. [REDACTED]. The claim consisted of the total of the large, \$100-plus charges, along with the close in time charges on June 11, 2014.

DISCUSSION

7 C.F.R. §273.16(b) provides as follows:

(1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first intentional Program violation....

Similarly, the Department's FS Handbook, §3.14.1, provides:

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

The definition of an IPV is found at 7 C.F.R. §273.16(c):

Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts;
or
- (2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

The sanction is only against the individual found guilty. Other family members remain eligible for FS.

Petitioner testified that she did not violate any program rules. She explained that she used the FS card to buy expensive [REDACTED] meat, despite the stores having virtually no meat in stock.

The issue is whether the Brown County judgment of a violation of the welfare fraud ordinance is sufficient to impose a one-year sanction. I conclude that it is sufficient. The federal regulation provides that a sanction can be imposed based upon the judgment of a local court. The charge against petitioner was that she intentionally violated FS rules in the use of her card. The definition of a program violation is that the person committed *any act* that violates program regulations in using, presenting, transferring, acquiring, receiving, or trafficking FS. The guilty verdict by a Brown County judge following a trial is sufficient to meet that standard.

Petitioner testified that her lawyer did not call her to testify at the trial. I cannot make a judgment on how the trial was conducted. Petitioner was found guilty, and under the FS regulations a one-year sanction can be imposed.

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). In addition, claims arising from FS trafficking-related offenses shall be recovered in the value of the trafficked benefits. 7 C.F.R. §273.18(c)(2). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

The definition of “trafficking” includes the following at 7 C.F.R. §271.2: “(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.”

In this case the overpayment consisted of benefits that the OIG determined to be trafficked. Ms. [REDACTED] explained the procedure for determining which benefits were considered to be trafficked (high dollar purchases from a store that had virtually no stock, paying off debts with FS as evidenced by the store’s debt ledgers, and purchases close in time).

The standard in an overpayment action is whether the preponderance of the evidence shows that the overpayment occurs as alleged. The OIG has shown that Brown County Circuit Court accepted the evidence that the two stores in question were violating FS rules and that petitioner was an active participant in the violations. In particular the Court accepted the evidence that large transactions over \$100 were extremely unlikely given the stores’ lack of stock and lack of counter space, as well as evidence that the store owners provided cash and ineligible items in exchange for cash. The preponderance of the evidence is that the \$100-plus transactions likely were for trafficked exchanges. In addition it is undisputed that FS exchanges to pay off debts are not allowed because that would be providing consideration other than eligible food as seen in the definition of trafficking cited above.

Petitioner testified that the large purchases were for expensive [REDACTED] meat. The problem with that testimony is that the stores had virtually no meat on hand, and the large purchases were made monthly in mid-month when petitioner’s FS card was replenished. It is unlikely, given the store’s history and lack of stock, that she was regularly using her FS to purchase expensive meat; it is more likely that the FS were being trafficked. I conclude, therefore, that the OIG correctly established its overpayment claim.

CONCLUSIONS OF LAW

1. The OIG correctly imposed a one-year FS sanction against petitioner following a Brown County court judgement that she violated an FS fraud ordinance.
2. The OIG correctly established that petitioner was overpaid \$1,511.03 in FS based upon the rule that trafficked FS must be recovered.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

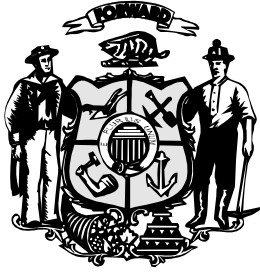
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of September, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 18, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]@dhs.wisconsin.gov